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HUMAN RIGHTS COMMITTEE
Sixty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

United Republic of Tanzania

1. The Committee considered the third periodic report of the United Republic of Tanzania (CCPR/C/83/Add.2) at its 1689th and 1690th meetings (CCPR/C/SR.1689 and 1690), held on 24 July 1998, and adopted the following concluding observations at its 1697th meeting (CCPR/C/SR.1697), held on 30 July 1998.

A. Introduction

2. The Committee welcomes the third periodic report submitted by the Government of the United Republic of Tanzania and notes that certain further information was provided by the delegation; it regrets, however, that the report did not fully comply with the Committee's guidelines and that the delegation addressed only in part the Committee's list of issues and was not in a position to answer fully members' oral questions.

B. Factors and difficulties affecting the implementation of the Covenant

3. Since the consideration of the last periodic report there has occurred an enormous influx of refugees into Tanzania from neighbouring countries and from Somalia. The volume has been such that individual assessment has been impossible except in a few cases; all the rest of these persons have consequently either been confined to camps where the conditions are primitive and which the State party has insufficient resources properly to police, or otherwise left to fend for themselves among the local villagers.

C. Positive factors

4. The restoration of political pluralism, by means of amending the Constitution, has enabled the whole population to participate in all aspects of public affairs (art. 25).

5. The courts have demonstrated a willingness to examine the actions of Government and its agencies for compliance with the Constitution, as exemplified in the interim injunction suspending the deregistration of Baraza la Wanawake wa Tanzania (BAWATA), an important women's organization.

6. Many limitations on freedom of expression have been eased on the Tanzanian mainland for the press, radio and television (art. 19).

7. The Committee notes with approval that a large reduction has been achieved in the employment of children in the gemstone industry, but makes a recommendation in that regard (see paragraph 25 below).

8. The Committee commends the proposal to establish a Constitutional Court to oversee, among other things, full respect for human rights.

D. Subjects of concern and the Committee's recommendations

9. The Nyalali Commission reported in 1992. Although its major constitutional proposals have been implemented there remain in force numerous acts and ordinances which it recommended for repeal or amendment. The Commission recommended the repeal of: the Emergency Powers Act 1986 (art. 4); certain aspects of the Human Resources Deployment Act 1983 which led to forced labour on communal projects (art. 8); powers of the President to detain persons (incommunicado for a period) without trial, under the Preventive Detention Act 1962 (art. 9); punishment under the Witchcraft Ordinance 1928 (arts. 7 and 10). The Commission further recommended that registration of societies under the Societies Ordinance 1954 be amended to provide for a separate Registrar and for appeal from his decisions (arts. 18 and 22). The Committee regrets that none of these proposals has been implemented and expresses the view that the Commission has accurately identified all these provisions as infringing human rights which are also protected by the Covenant; its proposals reinforce a number of the Committee's recommendations made on the examination of the second periodic report and reflect many of the Committee's current concerns. The Committee therefore recommends that priority be given to implementing the proposed reforms.

10. While the Committee is encouraged to hear that the courts are beginning to refer to the Covenant in judgements, it recommends that the Covenant be given formal recognition and applicability in domestic law (art. 2).

11. The Committee appreciates recent changes in the law so as to criminalize rape between separated spouses and the practice of female genital mutilation, as well as the power of a court to hear sexual abuse cases in private; however, it is concerned that traditional customs inhibit complaints on these matters, and that marital rape as such is not recognized as a criminal

offence. The Committee recommends that information be promulgated about these remedies and that the State party take action to support women who are entitled to take advantage of them (arts. 3 and 26).

12. The Committee is concerned at the application of personal laws which discriminate against women with respect, inter alia, to marriage, divorce, land and inheritance. The Committee is also concerned that customary attitudes discourage women from pursuing their full educational rights and that, as a result, they tend to lack the qualifications needed to reach higher levels of achievement in all aspects of activity, such as the senior judiciary, and are under-represented in political spheres. The Committee recommends that the State party put an end to these discriminatory laws and practices; that action be taken to increase the number of girls' schools; that persuasion be exerted on society to insist on girls' attendance at school; and that support be given to young women who wish to pursue higher education (arts. 3, 25 and 26).

13. The Committee is concerned that:

(a) The Law of Marriage Act discriminates against women with regard to the minimum age for marriage;

(b) Section 138 (6) of the Penal Code allows any person of African or Asiatic descent to marry, or permit the marriage of a girl under the age of 12, provided that there is no intention to consummate the marriage until she attains that age.

It recommends that these discriminatory features be eliminated from the law (arts. 3 and 26).

14. The Committee urges the State party to publish details on sentences to the death penalty, on the mainland and in Zanzibar; such sentences have not been carried out recently in either part of the Union, and the Committee recommends that this penalty be abolished (art. 6).

15. The Committee deplores the law in force in Zanzibar which allows for the imprisonment of both mother and father in the event of an unmarried woman becoming pregnant. In the Committee's view, this carries risks to the right to life (art. 6) (through resort to illegal abortion) and to the rights of the child (arts. 23 and 24) if born in such circumstances. It recommends the abolition of this law in Zanzibar and, noting in this connection that illegal abortion is a major cause of maternal mortality, that a national review be carried out on the restrictions on abortions (arts. 3, 6 and 26).

16. The Committee notes with approval the Nyalali Commission's recommendation to abolish corporal punishment as a judicial sentence; such penalty should also be precluded for offences against prison regulations and children should no longer be subjected to corporal punishment in schools (art. 7).

17. Despite the problems concerning the volumes of refugees entering and remaining in the country, the Committee urges that no refugee be returned to

another State unless it is certain that, once there, he or she shall not be executed or subjected to torture or other form of inhuman treatment (arts. 6, 7 and 13).

18. The Committee regrets the absence of training for the police in human rights and in the proper use of riot equipment, such as "rubber bullets". It takes note of actions by the police resulting in homicide, and is generally concerned that investigation of complaints against the police is carried out by the police themselves. It recommends that thorough training for the police be provided and that an independent mechanism be set up for investigating complaints (arts. 7 and 9).

19. The Committee is concerned about reports of armed groups ("sungu-sungu") which act as vigilantes and may commit abuses of human rights. It notes with approval the Nyalali Commission's recommendation that no militia be allowed to operate without specific legislative approval and recommends that, in any event, any such militia be properly trained and that their activities be subject to full supervision by the courts (arts. 7 and 9).

20. The Committee notes that it is accepted that prison conditions have deteriorated; there is reported overcrowding, rape and other sexual abuse of female prisoners, and a failure to comply with minimum standards. It recommends that resources be made available to remedy this situation and that training in human rights be given to prison officers, a sufficient number of female officers be recruited to ensure that only such officers are in charge of female prisoners. It also urges that alternatives to a sentence of imprisonment be made more widely available to the courts and that the judiciary be encouraged to use these alternatives, in appropriate cases, when passing sentence (art. 10).

21. The Committee urges the abolition of imprisonment for inability to pay a debt and that a study be carried out of alternative means of enforcing judgement debts, such as are currently in operation in other countries (art. 11).

22. The Committee regrets that the large number of election petitions currently before the High Court has so clogged the system that other proceedings, including trials for homicide, have been inordinately delayed. It is concerned that some two and a half years after an election, adjudication on the right of a person to sit in Parliament is still awaited. It is also concerned that case conferences (to expedite proceedings) convened by the courts themselves have offered no solution. The Committee recommends that suitable measures be adopted to extinguish the backlog of pending cases, and that a more expeditious procedure be adopted to determine electoral disputes (arts. 14 and 25).

23. The Committee calls on the State party to protect the freedom of an adult individual's sexual conduct and to bring its laws into conformity with article 17 of the Covenant.

24. The Committee notes with concern the high level of domestic violence. It recommends that specific revisions be introduced in legislation to provide civil and criminal remedies for such actions against the person responsible (art. 23).

25. The Committee remains concerned about the employment of children in industrial and agricultural activities. It urges the State party to take further steps to counter this continuing violation of children's rights (art. 24).

26. The Committee recommends the establishment of an independent body to oversee respect for and to disseminate knowledge of human rights, whether by an expansion of the powers of the existing Permanent Mission of Enquiry or by the creation of another mechanism.

27. There remain unanswered several concerns of the Committee, which were noted by the delegation, and it is anticipated that full, up-to-date answers will be provided in the fourth periodic report.

28. The Committee recommends that the Government of the United Republic of Tanzania submit its fourth periodic report by June 2002. It requests the Government to ensure the widespread dissemination of these concluding observations throughout the population, in Swahili as well as other languages. It further recommends that publicity be given to the right of individuals to make use of the Optional Protocol and the means of so doing.